

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RIVER OAK CENTER FOR CHILDREN,
INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

No. 05-77388

NLRB No. 20-CA-31640-1

MEMORANDUM^{*}

NATIONAL LABOR RELATIONS
BOARD,

Petitioner - Respondent,

v.

RIVER OAK CENTER FOR CHILDREN,
INC.,

Respondent - Petitioner.

No. 06-71055

NLRB No. 20-CA-31640-1

On Petition for Review of an Order of the
National Labor Relations Board

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Argued and Submitted January 16, 2008
San Francisco, California

Before: NOONAN, W. FLETCHER, and BEA, Circuit Judges.

The National Labor Relations Board (the “Board”) found that River Oak Center for Children, Inc. (“River Oak”) violated sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act (the “Act”), Pub. L. No. 74-198, 49 Stat. 449 (1935), *codified as amended at* 29 U.S.C. §§ 151-169, by refusing to provide bargaining unit member addresses and telephone numbers to Social Services Union, Local 535 (the “Union”) during negotiations of a new collective bargaining agreement. The Board granted summary judgment in favor of the Union and ordered River Oak to furnish the information. River Oak petitioned for review. The Union cross-applied for enforcement of the Board’s order.

The parties are familiar with the facts. We proceed to the law. This court upholds decisions of the Board if the Board’s findings of fact are supported by substantial evidence and if it has correctly applied the law. *NLRB v. Int’l Bhd. of Elec. Workers, Local Union 112*, 992 F.2d 990, 992 (9th Cir. 1993). We review questions of law *de novo*, but give considerable deference to the Board’s expertise in construing and applying the Act. *Id.*

The Act provides that it is an unfair labor practice for an employer “to interfere with, restrain or coerce employees in the exercise of the rights guaranteed

[by the Act]” or “to refuse to bargain collectively with the [employees’ representatives]. . . .” *See* Sections 8(a)(1), (5), *codified at* 29 U.S.C. §§ 158(a)(1), (5). The Supreme Court has held that the duty to bargain “includes a duty to provide relevant information needed by a labor union for the proper performance of its duties as the employees’ bargaining representative.” *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979) (citations omitted). A “liberal, discovery-type standard” applies to the determination of relevancy. *Press Democrat Pub. Co. v. NLRB*, 629 F.2d 1320, 1325 (9th Cir. 1980) (citations and internal quotation marks omitted).

The Board has repeatedly held that in the context of collective bargaining, home addresses and telephone numbers of bargaining unit employees are presumptively relevant and that the employer has the burden of proving lack of relevance. *See, e.g., A-Plus Roofing, Inc.*, 295 NLRB 967, 970 (1989); *Watkins Contracting, Inc.*, 335 NLRB 222, 223-24 (2001); *Baker Concrete Constr., Inc.*, 338 NLRB No. 48 at 4 (2002); *La Gloria Oil and Gas Co.*, 338 NLRB 858, 858 (2003). We find that the Board correctly treated the Union’s request as presumptively relevant.

River Oak contends that two sections of its collective bargaining agreement (the “CBA”) with the Union prohibit it from providing employee contact information and thereby defeat the presumption. The first, Section 11A, provides

that “[a]ll personnel records are confidential. Access to the personnel file is limited to the employee, the employee’s supervisor, the President/Chief Executive Officer, the Human Resources and other Human Resources.” River Oak argues that because the Union is not specifically mentioned in this list, River Oak is prohibited from disclosing contact information to the Union. River Oak ignores the fact that this section refers to “personnel files,” which include far more employee information than just contact information. This section does not clearly prohibit River Oak from providing the Union with employee contact information.

The second section, Section 11G, provides that “[River Oak] respects the privacy of its employees and strives to insure confidentiality of information about employees and former employees. Information is not to be improperly released either within the Agency or to external sources. Any calls, documents, or questions concerning . . . home address and telephone numbers . . . shall be referred only to the Human Resources Director or his/her designee.” This section only specifies that requests for employee addresses and telephone numbers will be referred to the Human Resources Director. It does not specify what this person is supposed to do with these requests and it does not prohibit River Oak from providing the information to the Union. The release of such information to the Union also would not be “improper[]”, given the presumption of relevancy such information has during the collective bargaining process.

The dissent also cites Section 2E in support of its position. This section provides:

Not later than the (10th) tenth of each month, [River Oak] shall supply the Union with the name, classification, mailing address and date of hire of newly hired employees, the name address and date of status change for any employee whose status changed from On-Call to Regular Employee and the names of any employees terminated or laid off during the previous month.

Contrary to the dissent's assertion, this provision does not prohibit River Oak from supplying mailing addresses and telephone numbers on other occasions. It also is silent as to how the parties should interact during collective bargaining. Even when read in light of the CBA's other provisions, Section 2E does not explicitly prohibit River Oak from complying with its obligations under the Act and agency case law to deliver employee addresses and telephone numbers to the Union during collective bargaining.

In light of the vagueness of the CBA and the clarity of the case law, substantial evidence supports the Board's finding that the CBA does not prohibit River Oak from providing the Union with employee contact information.

The petition is DENIED and the Board's order is ENFORCED.